

1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

4 IN RE: § CASE NO. 21-30923-11
§ HOUSTON, TEXAS
5 GRIDDY ENERGY, LLC, § THURSDAY,
§ APRIL 1, 2021
6 DEBTOR. § 1:57 P.M. TO 2:24 P.M.

7
8 MOTIONS TO APPOINT ADDITIONAL COMMITTEES (VIA ZOOM)

9 BEFORE THE HONORABLE MARVIN ISGUR
10 UNITED STATES BANKRUPTCY JUDGE

11
12 APPEARANCES: (SEE NEXT PAGE)

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15 (Recorded via CourtSpeak; No log notes)

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(Please also see Electronic Appearances.)

1 HOUSTON, TEXAS; THURSDAY, APRIL 1, 2021; 1:57 P.M.

2 THE COURT: All right. Good afternoon. We're
3 here in the Griddy Energy case with respect to the oral
4 motions and the written motion to appoint additional
5 Committees.

6 I want to start with a report from the US
7 Trustee. I understand that from just reading the Docket
8 Sheet that a Committee has been appointed and I want to
9 understand who's on the current Committee and then we'll
10 move to the parties that are the Movants here today.

11 If I can get the US Trustee to press five star
12 one time on your phone please?

13 Ms. Whitworth, good afternoon.

14 MS. WHITWORTH: Good afternoon, Judge Isgur.

15 Can you hear me?

16 THE COURT: I can. Thank you.

17 MS. WHITWORTH: Your Honor, I am very pleased to
18 report that the US Trustee has fulfilled his duty under
19 Section 1102(a)(1) of the Bankruptcy Code to appoint a
20 Committee of unsecured creditors as reflected in the United
21 States Trustee's Notice of Appointment of Creditors filed at
22 Document 116.

23 Judge, this Committee consists of three members,
24 all of whom are former customers and claimants against the
25 Debtor and the US Trustee takes the position that the

1 Committee adequately represents all unsecured creditors
2 including those claimants against Griddy and we don't feel
3 like an additional Committee is required at this time.

4 I spoke with Ms. Ryan --

5 THE COURT: So what is Ms. O'Neil's claims
6 against the Estate?

7 MS. WHITWORTH: She is in the same position as
8 the other customers who were billed at the higher rate and
9 suffered a loss --

10 THE COURT: She's one of the most prominent
11 restructuring lawyers in the state and just happens to also
12 be a former customer of Griddy? I just want to be sure
13 that's what's going on.

14 MS. WHITWORTH: Yes, Your Honor.

15 THE COURT: All right. And Mr. Williams?

16 MS. WHITWORTH: He is also a Griddy customer.
17 He, I believe -- let me pull up my chart, Your Honor. I
18 believe he was billed over \$17,000 for two -- or three
19 different meters that normally ran between \$75 and \$150 a
20 month.

21 And Ms. Khoury is also one of the customers who
22 was billed at the higher rate than normal.

23 THE COURT: All right. Thank you.

24 Now let me hear from the --

25 MS. WHITWORTH: Your Honor?

1 THE COURT: I'm sorry. Go ahead.

2 MS. WHITWORTH: If I may, Your Honor?

3 Ms. Lisa Khoury, who was elected as the chair of the
4 Unsecured Creditors Committee, would like to address the
5 Court and say a few words on behalf of the Committee, if the
6 Court would permit her the time to do that.

7 THE COURT: I will. First, I want to hear from
8 those that made motions and then --

9 MS. WHITWORTH: Yes, sir.

10 THE COURT: -- I basically wanted a status report
11 from you on the existing Committee. As to the merits of
12 appointing a new Committee, I don't know whether some of
13 those motions are going to be moot. I just don't know what
14 the status is and I want the parties (indiscernible). So
15 those who made oral motions, we will hear from you.

16 Ms. O'Neil, I see you there and you've raised
17 your hand. I assume that you're not making an oral motion
18 but just clarifying your role as that of a customer; is that
19 right?

20 MS. O'NEIL: Yes, Your Honor. I just wanted to
21 respond to the Court. For the Record, Holly O'Neil.

22 I am appearing basically in the unfortunate
23 position of being a creditor in this particular instance.
24 We had two properties both on Griddy and unfortunately our
25 -- ran up about \$27,000 in costs on those two properties,

1 which were paid -- or charged against us by Griddy directly.
2 So I know it's unusual, but I also wanted to be helpful to
3 the process as well. so.

4 THE COURT: I saw your name on the list and I
5 said I've got to find out what's going on here before I go
6 on and that clarification answers the question that I had,
7 so thank you.

8 Ms. Ryan, go ahead.

9 MS. RYAN: (No audible response).

10 THE COURT: Ms. Ryan?

11 MS. RYAN: Good afternoon, Judge Isgur. This is
12 Abigail Ryan representing the State of Texas and I'm with
13 the Office of the Texas Attorney General.

14 I believe since the US Trustee has appointed a
15 Committee of general unsecured creditors, which looks like
16 it will be led by consumers that have been caught up in the
17 winter storm, that my request for a Consumer Committee is
18 moot by the appointment of the General Unsecured Creditors
19 Committee.

20 THE COURT: Thank you.

21 MS. RYAN: Thank you, Your Honor.

22 THE COURT: Mr. Jordan?

23 MR. JORDAN: (No audible response).

24 THE COURT: Mr. Jordan?

25 MR. JORDAN: Judge, thank you. Very briefly just

1 to let you know our position, then when you're ready to hear
2 our arguments, I'll do that.

3 Our position is that the appointment of the
4 Committee that happened on the eve of this hearing that
5 happened last afternoon -- last afternoon and met for the
6 first time this morning, that that probably is -- I don't
7 know what really motivated the timing, but that probably is
8 a good indicator of progress in that there's a legitimate
9 Committee. There are no tort claimants on that Committee,
10 and so a legitimate Committee of those people whose contract
11 obligations resulted in being tagged for huge amounts of
12 money that no one would in my mind had foreseen.

13 But the issue about what our motion deals with
14 has nothing to do with this Committee. This Committee is
15 the -- the lady that wants to talk to you is the class
16 representative of those people who lost money by being
17 overcharged and the other two members -- Ms. O'Neil just
18 mentioned and Mr. Williams, they're also people who are
19 contractually obligated to do something that no one
20 contemplated. And so the question becomes: How is that to
21 be handled?

22 The issues for them are absolutely distinct from
23 the issues that the tort claimants have in this case and so
24 for that reason, Judge, we truly desire to go forward with
25 our hearing on the motion to appoint a -- now a tort -- a

1 customers' tort claim Committee. I don't -- I doubt the
2 motivation had any to do with the higher standard that many
3 courts apply to a second Committee because we were really
4 not anticipating being a second Committee. We were in line,
5 I thought, to be a participant in a Committee of tort
6 claimants and -- but now we are a second Committee.

7 But I don't think that changes the nature -- will
8 not change the nature of my presentation to the Court today,
9 nor should it change the nature of, I don't think, the
10 burden of proof since this has all happened literally within
11 hours of this Court's announced hearing when you announced
12 Monday there'd be a hearing on these issues. The response
13 came yesterday evenin, so.

14 THE COURT: All right.

15 MR. JORDAN: And let me just mention one other
16 thing. The Debtor has filed an opposition and objection to
17 our motion and that opposition basically said they weren't
18 opposed to a Committee of customers, they were only opposed
19 to any Committee member being a customer and a tort
20 claimant. And I think the effect is they got their wish in
21 that respect. This Committee that has now been appointed by
22 the US Trustee doesn't have any representation of a tort
23 claimant on it at all.

24 THE COURT: Thank you.

25 Let me hear from Ms. Khoury and then we're going

1 to come back and let's talk about how we're going to proceed
2 on your motion.

3 Ms. Khoury, if I can get you to press five star
4 one time on your phone please?

5 All right. I've got you.

6 MS. KHOURY: Your Honor --

7 THE COURT: Ms. Khoury, good afternoon.

8 MS. KHOURY: Good afternoon. Can you hear me?

9 THE COURT: I can. Thank you.

10 Thank you for agreeing to serve as chair of the
11 Committee, Ms. Khoury.

12 MS. KHOURY: Yes. And we are excited to serve
13 and assist the Court. On behalf of the Committee, I just
14 wanted to let you know we recognize that it's our
15 responsibility to represent all unsecured creditors and that
16 we think that we can do this as one Committee and we want to
17 do this properly as we do realize this is a unique case.

18 THE COURT: Thank you, Ms. Khoury.

19 Mr. Jordan, if you want to proceed today, I'm
20 going to let you proceed today. This is scheduled for
21 hearing today. If you want to wait because things changed
22 late yesterday, I don't think in any way unfairly, I'm going
23 to abate your motion and let you bring it back on for
24 another day.

25 I have real questions about some of the stuff in

1 your pleadings, but, you know, those -- there may be very
2 good answers to the questions that I have.

3 Do you want to proceed today or do you want to
4 proceed on another day where you can better swallow and
5 absorb the appointment of a Committee?

6 MR. JORDAN: Judge, I actually think today would
7 be fine. I don't -- I'm anxious to hear issues of concerns
8 that the Court has and -- so that would -- I wouldn't be
9 comfortable waiting for another week wondering what
10 Judge Isgur was concerned about, so -- and from my
11 perspective, I think because the distinctions that I made
12 earlier, I would like to proceed today with just a series of
13 oral arguments to -- that the Court understand our position
14 that there is no representation of any tort claimant on this
15 Committee and that that -- and the tort claimant is so
16 distinct that it really needs to be handled in a fashion of
17 having a Tort Committee, which I know the Court is very
18 familiar with those kind of Committees and have implemented
19 those from time to time, but I --

20 THE COURT: So you're not going to -- you won't
21 have any actual evidence today, it's going to be argument?

22 MR. JORDAN: It's just going to be argument.

23 There may be some judicial notice requests, but it's just
24 argument. In fact, it's --

25 THE COURT: I really have two questions for you

1 and let me just ask them.

2 MR. JORDAN: Okay.

3 THE COURT: First is: How many tort claimants
4 are you aware of against Griddy itself?

5 MR. JORDAN: Against Griddy as customers? Gosh,
6 I -- Judge, I can't give you an accurate number. I can say
7 that it's multiple. We have four candidates that we sent to
8 the US Trustee's Office earlier this week and before with
9 respect to the Committee and one movant is named, but we
10 have three others or four others that have filled out the
11 information and have asked.

12 But the problem I would have in giving you a
13 number is I think even the law firms that I've been working
14 with don't have accurate numbers yet. They've got
15 inquiries, they have -- they're going through their due
16 diligence, but it would number in a fairly large number, we
17 believe, but that's about as accurate, Your Honor, as I can
18 get. If that needs to be more accurate, I can certainly
19 have that answer quantified with what we have so far, but I
20 will say that it's --

21 THE COURT: Well, of the three, what are the
22 injuries by the three, the alleged injuries for the three?

23 MR. JORDAN: Actually there's four, I think.
24 Three are property damage claims, that is, broken pipes,
25 flooding, those sort of things. And then the Movant,

1 Ms. Prescott, is a personal injury claim. I don't have the
2 details, Judge, of her injuries because the problem we had
3 is that assigning the claims among the various entities that
4 are involved in both bankruptcy and non-bankruptcy has been
5 a real task. We don't -- for instance, we don't in the
6 Griddy case have access to the customer base. The address
7 is not disclosed --

8 THE COURT: But you have clients and the clients
9 know who their power provider was, right?

10 MR. JORDAN: They do. And in the event that
11 Patrick Luff (phonetic) is on the phone and can answer the
12 questions specifically, I would defer to him. He is one of
13 the counsel, Judge, the -- for one of the law firms that's
14 been most active and he has really been handling the
15 database and the information that's been furnished to me, so
16 I would be giving you secondhand information.

17 THE COURT: Okay.

18 MR. JORDAN: If Mr. Luff --

19 THE COURT: What could Griddy in theory have done
20 so that your clients with broken pipes wouldn't have had
21 broken pipes? What could Griddy itself have done? As a
22 retail provider only, what could they have done so that your
23 clients wouldn't have had broken pipes?

24 MR. JORDAN: Judge, I would say -- I'd say it's
25 slightly different. Here's what they should have done at a

1 minimum: What they could have done --

2 THE COURT: No, no. I want you to answer my
3 question.

4 What could they have done that if they had done
5 it, your clients wouldn't have had broken pipes?

6 MR. JORDAN: They could have fully disclosed to
7 our clients that the recommendations of the -- the FERC
8 recommendations of the Texas Energy Commission, those that
9 -- the recommendations or the instructions that were set out
10 in our motion, they could have warned their customers,
11 "Look, here's the problems we have" and --

12 THE COURT: If they had warned their customers,
13 your customers still wouldn't have had electricity. I want
14 to know what could they have done so that your clients
15 wouldn't have had broken pipes.

16 MR. JORDAN: Well, I would say it this way: I
17 think, I understand the science of this, is that certain
18 providers didn't have these issues, certain -- well, for
19 instance, I was right in the middle of Austin and six inches
20 of snow --

21 THE COURT: That's a distribution issue, not a
22 retail provider.

23 What could a retail provider have done so that
24 your clients would not have had broken pipes? Because if
25 that's not part of the pleading, I don't have any idea why

1 there's a claim.

2 MR. JORDAN: And part of the pleading that I
3 filed with the Court says that the duty to have disclosed
4 that their counter -- contract counterparties, that is, the
5 generators or the distributors or the transmission, they
6 have not done what the recommendations since 2011 required
7 and that was to winterize --

8 THE COURT: What steps of Gridly would have
9 stopped your clients' pipes from breaking? Disclosure alone
10 doesn't stop a pipe from breaking.

11 MR. JORDAN: Well, it --

12 THE COURT: What would have stopped your clients'
13 pipes from breaking?

14 MR. JORDAN: It could have only -- in my argument
15 thus far, it could only have caused the customer to employ
16 another agency or another provider.

17 THE COURT: I think that's a basic
18 misunderstanding of how the Texas system works. I can buy
19 electricity from virtually any retail provider here in
20 Houston and at my home when my power went out, it was
21 because CenterPoint couldn't deliver power to me. It had
22 nothing to do with who I bought power from. I bought it
23 from a retail provider. My retail provider couldn't have
24 made CenterPoint give me power.

25 I want to know your theory under which your folks

1 wouldn't have been without power. And going to another
2 retail provider is a theory that on its face is inconsistent
3 with the way that I understand the system to function.
4 Maybe my understanding is wrong and maybe I should give you
5 a chance to let me know this answer to this, but I'm not
6 going to be appointing a Committee on a frivolous claim.

7 MR. JORDAN: Well, and I wouldn't -- I really
8 wouldn't ask you to do that so I would suggest that I have
9 an opportunity to answer the question in the specifics of
10 the industry how it works.

11 But back to the point that I was trying to make
12 is that if Griddy had said, "Look, what's happening here is
13 that if you don't winterize your own home, here's what's
14 going to happen. If you don't buy you a generator, here's
15 what's going to happen." There are ways that Griddy could
16 have cautioned that the buying of cheap electricity or could
17 have cautioned that our counter-contract parties are not
18 winterizing the system and that you will likely lose --

19 THE COURT: No. Griddy couldn't make them do
20 that. And the price that Griddy charged had nothing to do
21 with the reliability, I don't think. Maybe this is just a
22 fundamental misunderstanding on my part and I do want to
23 understand this. If Griddy could have --

24 MR. JORDAN: Well, I --

25 THE COURT: If there's something Griddy could

1 have done so that your clients would have had power, I
2 understand the claim, but if there's nothing Griddy could
3 have done so that your clients would get power, I don't
4 understand it and it looks frivolous. If you want some time
5 to answer that question, I will give you the time.

6 MR. JORDAN: Judge, I do because first of all, I
7 would -- if it turns out to be you're accurate and I'm not,
8 I will not pursue a frivolous motion, so I want the
9 opportunity to respond to you. And I feel ill-prepared
10 because only because this is not my industry. This was --
11 my industry is applying these facts that I'm aware of to the
12 Bankruptcy Code and to the issues that are involved. But I
13 would like some additional time to respond specifically to
14 your question as it applies to the industry that I may be
15 entirely mistaken about.

16 THE COURT: So let me ask -- I think the most
17 objective one here right now about this will be the Attorney
18 General's Office. I don't know if that's Ms. Ryan,
19 Mr. Binford.

20 Am I understanding the basics of how the system
21 works? Because if so, I don't want to be sending Mr. Jordan
22 down a rabbit trail either.

23 Ms. Ryan, Mr. Binford, whoever wants to answer.

24 MS. RYAN: Good afternoon, Your Honor. This is
25 Abigail Ryan for the Texas Attorney General's Office. As I

1 represent the Consumer Protection Division, I think that I
2 will let Mr. Binford answer that question for you.

3 THE COURT: Thank you.

4 Mr. Binford, is there -- in your view, is there
5 something a retail provider could have done to assure
6 distribution of power to Mr. Jordan's clients' homes?

7 MR. BINFORD: Your Honor, Jason Binford, on
8 behalf of the Public Utility Commission.

9 I'm not aware of anything, but I hesitate to have
10 my opinion carry a whole lot of weight here. I'm in a
11 similar situation of Mr. Jordan where I can -- I'd love to
12 debate the intricacies of the Bankruptcy Code with Your
13 Honor, but I certainly do not present myself as an expert in
14 this industry and I can discuss with my client but for
15 whatever it's worth, Jason Binford's opinion is that I don't
16 understand what they could have done.

17 THE COURT: All right. I'm going to give you a
18 chance to tell me, Mr. Jordan.

19 Why don't I do this? If anyone objects, please
20 voice it. Otherwise, I'm abating the motion. When you're
21 ready to terminate the abatement, I want you to file a
22 motion to terminate the abatement and include with it an
23 explanation of what Griddy could have done so that your
24 clients would not have lost power.

25 MR. JORDAN: Judge, I really appreciate that

1 courtesy and I will do that and I will do that as promptly
2 as I can. I know this abatement is not going to -- doesn't
3 need to be hanging around, so I will get the -- as much of
4 an answer as I can get accurately and with citations as
5 quickly as I possibly can. And I appreciate
6 (indiscernible).

7 THE COURT: Ms. Spigel? Go ahead, Ms. Spigel.

8 MS. SPIGEL: Your Honor, Robin Spigel, Baker
9 Botts, counsel for the Debtor.

10 Your Honor, Mr. Jordan brought this motion and
11 it's fraught with inaccuracies related to the business. We
12 object to the ability of him to come back and spend more
13 time and money -- there's a lot of lawyers -- on this
14 particular hearing. He doesn't know whether his clients
15 have claims, what kind of claims they are and what the
16 relationship is between Griddy business and the claims that
17 he's making.

18 Griddy provided access to electricity. His
19 clients got electricity because we procured it from ERCOT or
20 others and it was transmitted to his clients. I don't think
21 there should be another opportunity for Mr. Jordan to come
22 back and reopen his claims. He hasn't -- there are no
23 claims that have been filed. The motion is by one movant
24 and five law firms. We haven't -- we're not aware of any
25 property damage or personal injury related to Griddy. And

1 we object to it being abated or adjourned.

2 THE COURT: I'm going to overrule the objection.

3 If he can give me a credible picture, then I'm going to
4 allow him to present it. I'm not going to deny Texas
5 customers the ability to be here, but they're going to be
6 here on something that at least I understand is potential
7 for a claim. And right now my view is the claim as stated
8 looks frivolous, but that is based on my general
9 understanding of how the Texas power system is put together
10 and I shouldn't be dismissing something based on my general
11 understanding. If Mr. Binford's not an expert, then I
12 promise I'm not an expert. So let me let Mr. Jordan have
13 the opportunity to replead it.

14 You don't know Mr. Jordan, maybe you do know
15 Mr. Jordan. I don't think he's going to replead it and tell
16 me something that isn't accurate so he'll investigate now
17 and figure out what they could have done. If there's
18 nothing that they could have done, then he's not going to
19 move to terminate the abatement. We'll see it then.

20 I'm abating. We'll wait and see what we get.

21 Thank you.

22 MR. JORDAN: Thank you, Judge.

23 THE COURT: I am showing that the oral motion
24 made by the Attorney General is now withdrawn as moot.

25 We have a Committee. My thanks go to the US

1 Trustee for appointing a Committee so promptly.

2 Ms. Khoury, I appreciate the fact that you
3 recognized that your job is for all unsecured claims and not
4 just for customer claims. I think that the fact that the
5 three members of the Committee happen to be customers means
6 that we won't lose focus that customers may have claims as
7 well, but your duty isn't just to customers, it's to
8 everybody.

9 I would also encourage you, because of the lack
10 of money in the case and because of the fact that most cases
11 and most claims of this nature are going to result in some
12 contingency fee award, you consider -- the Committee should
13 consider retaining counsel that is funded, at least in part,
14 on a contingency fee basis based on the benefits that are
15 derived to the holders of unsecured claims. That is not a
16 requirement. You're allowed to try and hire somebody on an
17 hourly fee basis and maybe some mixture of the two, but I
18 would just encourage you to consider all your alternatives
19 and if you come up with an alternative that makes sense,
20 then I'll approve it.

21 But most people are -- start off by believing
22 that a Committee can't hire contingency fee counsel and I'll
23 just tell you I start off believing a Committee can hire
24 contingency fee counsel and in this case, that may make more
25 sense. It is up to you and you may choose to hire pure

1 hourly. Okay.

2 We are in adjournment until 2:30. Thank you.

3 (Hearing adjourned at 2:24 p.m.)

4 * * * * *

5 *I certify that the foregoing is a correct
6 transcript to the best of my ability due to the condition of
7 the electronic sound recording of the ZOOM/telephonic
8 proceedings in the above-entitled matter.*

9 /S/ MARY D. HENRY

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13 JTT TRANSCRIPT #63747

14 DATE FILED: APRIL 6, 2021

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